

# MIAMIBEACH

OFFICE OF THE CITY MANAGER

NO. LTC# 399-2016

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 27, 2016

SUBJECT: **Introduction of the Bean Bag (Less Lethal) Shotgun into the Police Department**

This Letter to Commission is prepared to advise the Mayor and Commission that the Police Department is adding a new less-lethal weapon, the Bean Bag Shotgun, to its array of tools used to disarm and take into custody persons who present a danger to themselves or others. While new to the MBPD, the weapon has been regularly used by other police departments around the country for many years. It affords another option for police officers to safely disarm a subject, but from a greater distance than the best available current tool of the MBPD, the Taser.

## **Background**

More and more, American law enforcement agencies are being scrutinized when deadly force is employed. This is true even when the use of force is legal, justified and consistent with the organization's policies and training. Recent incidents have resulted in public scrutiny, outcry, and growing rifts – marked by protests and violence – between police departments and the communities they serve.

The dynamic and fluid nature of police work makes it impossible to predict when and where a deadly force situation may occur. It is therefore prudent that departments prepare their officers for such situations by providing them with continuous training that closely mirrors nationally accepted best practices. It is equally important that today's police officers be supplied with the broadest array of less-lethal tools and equipment that may be used as an alternative to the application of deadly force. In many of the 18,000 police departments in the United States, bean bag shotguns have been successfully used for decades as a less-than-lethal alternative to deadly force.

Recognizing that at any given moment officers can be confronted with a situation where deadly force may be justified, the MBPD will begin training the entire patrol force on the weapon and its accompanying tactics beginning the first week of October. The Department will begin deploying approximately forty (40) bean bag shotguns in November. The goal in spreading the 40 weapons across the entire 24-hour patrol force is to ensure that at least several officers equipped and trained with this device are on patrol at any given time to respond if needed to disarm and take into custody an emotionally disturbed or dangerous subject who is threatening harm to himself/herself or others.

### **Less than Lethal**

The bean bag 12-Gauge shotgun is considered a “less than lethal” weapon, like the Taser. This means that if used in the manner in which it was designed and intended, and consistent with proper training, the weapon will not cause death or serious injury. It is designed to gain a subject’s compliance without resulting in great bodily harm.

The bean bag shotgun operates in precisely the same manner as a regular shotgun. The significant difference is the ammunition used. The projectile deployed from the weapon is specifically designed to impact a person’s body by causing an immediate stun effect, but without the projectile penetrating into the body. The person struck by a bean bag round will feel pain and temporary, limited physical incapacitation, allowing police to take custody of the subject and control of the situation before it can escalate.

To visibly distinguish the bean bag shotgun, it will have a bright orange stock with the words “less lethal” clearly embossed and an orange fore grip (see photo, attached). The orange color is designed to signal to the operator and to all police officers on scene that a less-than-lethal shotgun is being deployed and is readily available as an option to resolve an encounter where the person is a danger to himself/herself or others.

The most significant added advantage the bean bag shotgun provides officers is the increased distance at which it is effective, which is much beyond the reach of the Taser. The ideal range to operate a Taser effectively is 0 to 12 feet from the subject, depending on how it is deployed. The ideal range for the bean bag shotgun is 20 to 75 feet, meaning that police officers can readily increase their distance and still disarm and temporarily incapacitate the subject much more safely than the close-in contact needed to deploy the Taser.

As a further safety precaution, the Department is eliminating the lethal shotgun from its arsenal. Police officers will no longer be permitted to carry and use a lethal shotgun. The Department is comfortable with eliminating the lethal shotgun because of the significant number of patrol officers who now carry rifles, which are more accurate than the shotgun.

### **Sanctity of Life**

The preservation and sanctity of life has always been and will remain a guiding principal of the MBPD. As such and pursuant to policy and training, the determination to use a bean bag shotgun will be made by an officer only when the following two conditions exist:

1. As an alternative to deadly force when all viable means and options to control or subdue a dangerous and violent subject have been exhausted; and
2. When an officer objectively and reasonably perceives an immediate threat of force directed at the officer or another person, or the subject is attempting to inflict self-injury.

### **Summary**

Recent national events have shown that even when the use of deadly force by police is both legal and justified, the event can result in a strained and tense relationship between the police department and the community it serves. In the current climate, it is vitally

important that police departments provide their officers with as many tools as possible as an alternative to the use of deadly force.

The Miami Beach Police Department will begin training and deploying less-than-lethal bean bag shotguns in November, after a cycle of training on the weapon and its accompanying tactics for all patrol officers over the next several weeks. The weapon is designed to stun and incapacitate a subject and will be utilized under strict guidelines, as outlined in this summary.

The lethal version of the shotgun will be removed from the MBPD arsenal and will no longer be permitted to be used by the Department.



JLM:DJQ:WJ:tr

# POLICE

	<b>GENERAL ORDER</b>	<b>GO #16-02</b>
	<b>BEAN BAG SHOTGUN</b>	
<b>CALEA Standard(s): 1.3.1; 1.3.4; 1.3.5; 1.3.9a-f; 1.3.10; 1.3.11a-c; 1.3.12</b>		

**PURPOSE:** To provide Department personnel with guidelines on the use of the less lethal intermediate weapon known as the bean bag shotgun. The Department maintains an inventory of certain less lethal intermediate devices that may be used to effect arrests. Less lethal intermediate devices and ammunition may be utilized to overcome a suspect's unlawful resistance, minimize danger to officers and protect innocent citizens.

**SCOPE:** This General Order (GO) applies to all sworn law enforcement, to include auxiliary and/or reserve police officers who elect to qualify with the optional less lethal intermediate weapon known as the bean bag shotgun.

**POLICY:** This Department recognizes and respects the value, integrity and sanctity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this Department that personnel will use reasonable force when force is used to accomplish lawful objectives, while protecting the lives of the officer or another person. Force in excess of that which is reasonable is prohibited.

**NOTE:** The Department will no longer deploy lethal shotguns or lethal shotgun ammunition. Use of the shotgun with any ammunition other than the less lethal bean bag round as described in this General Order is prohibited.

**DEFINITIONS:**

**BEAN BAG SHOTGUN** - A 12 gauge shotgun that is not intended to cause death or great bodily harm, clearly identified by an orange stock and orange fore-end with the words less lethal on the stock and authorized solely for the deployment of less lethal munition.

**LESS LETHAL INTERMEDIATE WEAPON** - A weapon that is not intended to cause death or great bodily harm, such as: aerosol deterrent spray (ADS), conducted electrical weapon (CEW), bean bag shotgun, 37/40 millimeter sponge round launcher, expandable baton and K-9.

**LESS LETHAL PROJECTILE** - A projectile not intended to cause death or great bodily harm that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person.

**NON-DEADLY FORCE** - Force that is not likely or intended to cause death or great bodily harm.

**OBJECTIVE REASONABLENESS** - An equation of qualifiers to determine if a law enforcement officer's actions in a particular instance were reasonable based on the totality of the circumstances. Some specific factors to consider are the circumstances unique to the rapidly evolving incident, the severity of the crime, the subject's immediate apparent threat to the officer or others, the level of suspect's resistance, the officer's abilities and training and the facts or circumstances known to the officer at the time of the incident.

**PROBABLE CAUSE** - Where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed.

**REASONABLE BELIEF** - The facts or circumstances an officer knows or should know are such as to cause a man of reasonable caution in the belief that the action taken was appropriate. In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.

**SELECTIVE RESPONSE TO SUBJECT RESISTANCE** - is the selection of force used by an officer in order to overcome subject resistance to complete a lawful act; to control a situation or the actions of persons, ranging through various levels to include verbal commands, physical contact, less lethal intermediate weapons, or deadly force.

**PROCEDURE:**

- I. Bean Bag Shotgun [1.3.9a] [1.3.10]
  - A. Only sworn law enforcement officers, auxiliary and/or reserve police officers who have met all statutory, training and proficiency requirements may be authorized to carry the bean bag shotgun approved and issued by the Department.
  - B. Authorized uniformed officers will carry the bean bag shotgun issued to them by the Department while on regular duty.
  - C. All bean bag shotgun training will be documented and monitored by a certified weapons or tactics instructor. [1.3.11a][1.3.11b]
  - D. The Training Section will be responsible for maintaining documentation of all initial, transitional, refresher and remedial bean bag shotgun training. Documented in-service bean bag shotgun refresher training will be conducted, at a minimum, every other year; [1.3.11][1.3.11b]

- E. All employees authorized to carry the bean bag shotgun will:
1. Receive instruction in Department policy and law concerning the use of bean bag shotgun; and [1.3.12][16.3.6]
  2. Receive a copy of this SOP electronically through PowerDMS and sign a receipt or electronic receipt for the same. [1.3.12]
  3. Demonstrate corresponding bean bag shotgun proficiency during initial, transitional, refresher and remedial courses.
- F. Bean Bag Shotgun Remedial Training [1.3.11c] [26.1.4a,b,c] [33.1.5]
1. Officers wanting to continue to carry the bean bag shotgun who fail to demonstrate proficiency on the first attempt will be immediately afforded a second chance to demonstrate proficiency.
  2. Officers failing to demonstrate bean bag shotgun proficiency on the second attempt will be provided another opportunity on the next available date.
  3. Officers who fail to attend and/or demonstrate bean bag shotgun proficiency on the third attempt, until a qualifying score is achieved:
    - a. Will immediately be relieved of the bean bag shotgun by the Range Master or designee.
    - b. The Range Master or designee will notify the officer's immediate supervisor verbally and by email without delay;
  4. The officer's immediate supervisor will:
    - a. Notify the officer's Division Commander via the Chain of Command;
    - b. Sworn officers who elect to continue to carry the bean bag shotgun will be scheduled for the first available remedial training date. The bean bag shotgun will be re-issued to the officer upon successful completion of remedial training; and [1.3.11c]
  5. Supervisors will relieve any sworn officer of any issued bean bag shotgun if the supervisor discovers the employee using the weapon in an unacceptable manner. The incident will be documented on an Allegation of Employee Misconduct form and will be investigated in accordance with SOP# 010 – Internal Affairs.
- G. The Range Master or designee will review, inspect and approve all bean bag shotguns prior to issuance. [1.3.9c]

H. Any bean bag shotgun found to be unsafe will be immediately removed from service and placed in the PEU for repair or replacement. [1.3.9d]

I. The PEU will maintain a record of every assigned bean bag shotgun [1.3.9e]

II. Authorized and Issued Bean Bag Shotgun [1.3.4][1.3.9a]

A. Bean bag shotgun

1. The bean bag shotgun may be used when the officer, based on objective reasonableness, perceives an imminent threat of physical force against himself/herself, other persons, or if the individual is attempting to harm himself/herself.

2. The bean bag shotgun may be used, in lieu of lethal force, and when de-escalation is a viable option, to control a dangerous or violent subject when deadly force is justified or attempts to subdue the subject by other methods have been, or will likely be, ineffective in the situation at hand.

3. Deployment

a. The bean bag shotgun will not be deployed, except in extraordinary situations, without an armed escort/cover officer.

b. Verbal warnings should be issued to the subject prior to deploying the bean bag shotgun to allow the subject the opportunity to comply with the officer's commands, unless the warning would provide a tactical advantage to the subject being taken into custody.

c. Prior to deployment, the deploying officer will announce '**Low Ready**' to alert other officers of the impending bean bag shotgun deployment.

4. The bean bag shotgun will be used pursuant to Department training.

5. A bean bag shotgun will not be used:

a. When the subject does not pose or appear to pose an immediate threat of physical force against an officer, other persons, or themselves or is passively resistant to an officer's command(s);

b. When the subject is at an elevated location which poses a risk of great bodily harm or death to the subject should the subject fall, unless deadly force is justified;

- c. When the subject is known or appears to be:
    - 1) A pregnant woman unless the use of deadly force is justified;
    - 2) A child under the age of 13 unless the use of deadly force is justified; or
    - 3) An elderly person unless the use of deadly force is justified.
  - d. When the subject is the operator of a motor vehicle;
  - e. On a handcuffed or otherwise restrained individual except in extraordinary articulable circumstances where such person violently attacks an officer or another person and places the officer or another person at risk of serious bodily injury or death and lesser means have been attempted and failed or are not feasible;
  - f. As an intimidation tactic, unless the officer reasonably believes justification exists to deploy the bean bag shotgun and it will be necessary to deploy the bean bag shotgun. The bean bag shotgun will not be deployed or displayed with the sole intent of coercing, frightening or intimidating an individual or a crowd;
  - g. To affect the arrest of a person who is unable to resist the officer.
- 6. When engaging a subject, the deploying officer will evaluate the effectiveness of each round after each impact.
  - 7. Control and handcuff the subject as soon as the situation permits;
  - 8. Fire Rescue will respond to all incidents in which a bean bag shotgun round has struck a subject whether or not the subject complains of pain or of being injured; [1.3.5]
  - 9. A supervisor will respond to the scene to prepare a Response to Resistance (COP) form.
  - 10. Officers will request a supervisor respond to the scene of all incidents involving the use of the bean bag shotgun.
  - 11. Photographs of the subject will be taken by the Crime Scene Unit personnel in all instances where the bean bag shotgun is deployed.
  - 12. The arresting officer will note on the back of the MDPD Records copy of the Complaint/Arrest Affidavit form that the bean bag shotgun was used on the subject.

13. A medical clearance may be required based on Miami Dade County Corrections (MDCC) policy prior to booking the subject at a detention facility other than the Department's temporary holding facility.
14. Patrol Carry
  - a. Bean bag shotguns will be carried with a minimum of four rounds in the magazine, chamber empty, safety off and un-cocked.
  - b. Unless exigent circumstances exist, the following loading/unloading procedures will be followed:
  - c. Bean bag shotguns will be loaded/unloaded away from public view, if possible;
  - d. A round will be chambered in the bean bag shotguns only when it is determined that deployment may be necessary;
  - e. Routine bean bag shotgun loading/unloading will be into and from the magazine tube with the barrel pointing in a safe direction; and
  - f. Chambered rounds will be removed directly from the chamber via the ejection port.
15. Patrol Carry/Stock – In lieu of a fixed weapons mounting system, officers are responsible for supplying their own cable, lock and/or lockable hard-sided box/case. A cable will be secured to one end of double locked handcuff. The opposite end of the handcuff will be secured around the narrow section of the fixed stock behind the receiver. The cable assembly will be affixed to a metal hard-point within the vehicle compartment and secured by threading and locking.
16. Lockable hard-sided box/case - The box or case will be secured with a cable and lock or double locked handcuff to a metal hard-point within the vehicle trunk or covered cargo area. The box or case will have a lockable lid/door to prevent unauthorized access to the firearm(s) inside.
17. Refer to SOP #007, Firearms, for guidance concerning safety, storage, security and transportation of firearms.

---

DJO/rc/pjp

**APPROVED BY:**



---

**Daniel J. Oates**  
**Chief of Police**



LESS LETHAL

